## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HOWARD R. POYNER ) Claimant )	
VS.	Docket No. 184,387
SHERWOOD CONSTRUCTION CO., INC. Respondent	Docket No. 104,367
AND	
ST. PAUL FIRE & MARINE INSURANCE	

## ORDER

**ON** the 31st day of May, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge George R. Robertson, dated April 22, 1994, came on for oral argument.

## **APPEARANCES**

Claimant appeared by and through his attorney, Gerald O. Schultz of Garden City, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Vincent A. Burnett of Wichita, Kansas. There were no other appearances.

#### RECORD

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter including the Preliminary Hearing of April 20, 1994, and the exhibits attached thereto.

### ISSUES

(1) Whether the Administrative Law Judge exceeded his jurisdiction by granting temporary total disability benefits to the claimant from September 29, 1993, through April 22, 1994.

- (2) Whether the Administrative Law Judge exceeded his jurisdiction in requiring the respondent and insurance carrier to proceed to the Benefit Review Conference in order to terminate temporary total disability compensation voluntarily commenced.
- (3) Whether the Appeals Board has jurisdiction to hear this appeal.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purpose of the preliminary hearing, the Appeals Board finds:

(1) K.S.A. 44-534a(a) grants an Administrative Law Judge the power to award temporary total disability compensation pending the conclusion of a full hearing on the claim. If temporary total disability compensation is awarded it may be ordered paid from the date of filing the application or, if the Administrative Law Judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total disability compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. See K.S.A. 44-534a(a)(2).

As the Administrative Law Judge is empowered and has the authority to provide temporary total disability compensation, the Appeals Board finds the Order of April 22, 1994, to be proper and within the power of the Administrative Law Judge.

(2)(3) The Appeals Board is limited in its right to entertain appeals of preliminary hearings. The provisions of K.S.A. 44-534a and K.S.A. 44-551 restrict same to specific issues, of which the authority to order or terminate temporary total disability is not one. The Appeals Board does not have jurisdiction to review the Administrative Law Judge's decision in this matter as he did not exceed his jurisdiction in this case.

## **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated April 22, 1994, remains in full force and effect.

IT IS SO ORD	RED.
Dated this	_ day of July, 1994.
	BOARD MEMBER
	BOARD MEMBER

# BOARD MEMBER

c: Gerald O. Schultz, 302 Fleming, Suite 5, Garden City, KS 67846 Vincent A. Burnett, 300 West Douglas, Suite 500, Wichita, KS 67202-2909 George R. Robertson, Administrative Law Judge George Gomez, Director